

1 IN THE UNITED STATES COURT OF FEDERAL CLAIMS
2
3 IN RE DOWNSTREAM ADDICKS)
4 AND BARKER (TEXAS) FLOOD-) Master Docket No.
5 CONTROL RESERVOIRS,) 17-9002L
6 Plaintiffs,)
7 vs.)
8 UNITED STATES OF AMERICA,)
9 Defendant.)
10 -----)
11
12 Suite 616
13 Howard T. Markey National Courts Building
14 717 Madison Place, N.W.
15 Washington, D.C.
16 Monday, July 15, 2019
17 3:00 p.m.
18 Telephonic Status Conference
19
20
21 BEFORE: THE HONORABLE LOREN A. SMITH
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25 Transcribed by: Elizabeth M. Farrell, CERT

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1 P R O C E E D I N G S

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3 (Proceedings called to order, 3:30 p.m.)

4 LAW CLERK: Hi, this is Matney again. May I
5 please have a roll call for the record?

6 MS. TARDIFF: Yes, good afternoon. For the
7 Defendant, this is Kris Tardiff from the Department of
8 Justice. I have with me on other phone lines William
9 Shapiro, who is co-counsel here and also counsel of
10 record in the Upstream subocket. Also from the
11 Department of Justice, Laura Duncan, Sarah Izfar, and
12 Brad Levine.

13 MR. NOLAN: And for the Plaintiffs, this is
14 Rand Nolen. I'm joined by Jack McGehee, Will Consovoy,
15 David Frederick, and Warner Hocker, appearing for Richard
16 Mithoff.

17 MR. MELANOWSKI: And on behalf of the
18 subrogated carriers, [it's Evan Melanowski.

19 THE COURT: Okay, all right. Mr. Nolen, the
20 purpose of this call, and Ms. Tardiff, is just to check
21 up and see how things are going and if everything is
22 looking like it's on schedule. And, Mr. Nolen, you want
23 to begin?

24 MR. NOLEN: Sure, Your Honor. As best I can
25 tell, everything appears to be exactly on schedule. The

1 Court entered the June 6th, 2019 order, which was agreed
2 to, and since that time, I believe that everything is
3 actually on schedule.

4 THE COURT: Okay.

5 Ms. Tardiff?

6 MS. TARDIFF: Yes, Your Honor. So under the
7 current summary judgment schedule with the short
8 extension that we requested and received, we are on
9 schedule in terms of proceeding with cross-motions for
10 summary judgment.

11 I think the only issue I would flag at this
12 juncture for the Court is the question with respect to
13 Plaintiff Lawrence Madigan's filing. We did file an
14 opposition and a motion to strike that filing. He was
15 looking to come in as an amicus curiae, but is actually a
16 named plaintiff in this case.

17 THE COURT: Oh, I didn't realize he was a named
18 plaintiff somehow.

19 MS. TARDIFF: I'm not sure that was identified
20 in his original filing. And we were served last week
21 with a -- from Mr. Madigan with a response and a proposed
22 amended summary judgment memorandum. So I don't know if
23 the Court has received that yet, but that's -- he was
24 looking to have that filed, as well. So that would be
25 the only outstanding question for us with -- well, we do

1 oppose his participation for the reasons stated in our
2 motion to strike as an amicus curiae on summary judgment.

3 But if the Court's inclined to allow him to
4 participate, then we would simply want the opportunity to
5 discuss scheduling in that regard.

6 THE COURT: Okay. Let me ask Mr. Nolen, is he
7 one of your Plaintiffs who is represented by you or one
8 of the counsel in the case?

9 MR. NOLEN: Yes, Your Honor, he is actually one
10 of the Plaintiffs in the Addicks and Barker Downstream
11 litigation.

12 THE COURT: Okay. Yeah, it seems in that case
13 he can't be an amicus curiae and he has to do everything
14 through his counsel, which again I was not aware -- we
15 were not aware of when he filed the amicus curiae brief.
16 And I must say, since it was short and he appeared to be
17 a retired member of the bar, I kind of was overly lenient
18 to let it in. But in that case, it seems to me
19 impermissible. So I will grant the motion to strike and
20 we will notify him. If he wants to write something, he
21 can write it to his counsel instead of to the Court.

22 So anything else that --

23 MS. TARDIFF: Nothing else for Defendants,
24 thank you.

25 THE COURT: Okay. Well, at this stage, we've

1 got to schedule. If there's any need for a status
2 conference on any other matter that comes up because I
3 think rather than filing motions for major things, a
4 status conference can dispose of them much more quickly
5 than back and forth motions. But on obviously major
6 things -- the motion to strike was not a major thing. So
7 that was fully appropriate. But you can always call
8 Matney and we can schedule, when necessary, fairly
9 rapidly.

10 I have been kind of somewhat tied up. My wife
11 is in the hospital with kidney failure and her heart,
12 mainly kidney failure, but -- not 100 percent, but enough
13 that she's really very sick. So I may be hanging around
14 here, but I can be reached by telephone fairly quickly.

15 MS. TARDIFF: Well, thank you, Your Honor. We
16 are very sorry to hear that.

17 THE COURT: Thank you, thank you.

18 So we will look forward to seeing you down the
19 road here a bit.

20 MR. NOLEN: Thank you, Your Honor.

21 THE COURT: And, again, if there's -- Mr.
22 Nolen?

23 MR. NOLEN: Yeah, no, I just said thank you,
24 Your Honor. I thought you were at the end.

25 THE COURT: Oh, okay. Yeah, the one thing I

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1 was going to add, obviously, if there are any ways in
2 which the Court can contribute to settlement, the Court
3 is always willing to do that.

4 Okay, thank you all again and we'll talk to you
5 down the road.

6 MR. NOLEN: Thank you, Judge.

7 MS. TARDIFF: Thank you very much, Your Honor.

8 THE COURT: Okay, bye.

9 (Whereupon, at 3:11 p.m., the hearing was
10 adjourned.)

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1 CERTIFICATE OF TRANSCRIBER

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3 I, Elizabeth M. Farrell, court-approved
4 transcriber, certify that the foregoing is a correct
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10 DATE: 9/30/2019 S/Elizabeth M. Farrell

11 ELIZABETH M. FARRELL, CERT

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